CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 110

ALBERTO COSTANZO, PETITIONER,

vs.

ANNA C. M. TILLINGHAST, UNITED STATES COMMISSIONER OF IMMIGRATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED MAY 28, 1932.

CERTIORARI GRANTED OCTOBER 10, 1932.

(36,807)

(36,807)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 110

ALBERTO COSTANZO, PETITIONER,

vs.

ANNA C. M. TILLINGHAST, UNITED STATES COMMISSIONER OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

	Original	Print
Proceedings in U. S. C. C. A., First Circuit	1	1
Caption (omitted in printing)	1	
Record from D. C. U. S., District of Massachusetts	1	1
Petition for Writ of Habeas Corpus	1	1
Exhibit A—Warrant for Arrest of Alien	4	3
Marshal's Return on Summons	5	4
Order dismissing Petition	6	5
Claim of Appeal and Allowance thereof	6	5
Extracts from record of U. S. Board of Immigration	6	6
Mittimus—state prison	7	6
Testimony of Alberto Costanzo	8	8
Application for warrant of arrest	9	9
Warrant for arrest	11	10
Testimony of Alberto Costanzo	12	11
Gaetano Costanzo	17	17
Alberto Costanzo	18	18
Summary and recommendation	23	24

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 26, 1932

	Original	Print
Memorandum of Board of Review	24	25
Warrant for deportation	26	27
Memorandum of Board of Review	27	28
Memorandum of Recognizance	31	32
Petition for Appeal and order allowing same	33	34
Assignment of Errors	33	34
Bond on Appeal (omitted in printing)	34	
Citation and Acknowledgment of Service thereof (omitted in printing)	35	
Certificate of Clerk (omitted in printing)	36	
Memorandum re orders enlarging time	36	35
Opinion, Bingham, J.	37	35
Concurring opinion, Morton, J.	41	39
Final decree	42	40
Memorandum re stay of mandate	42	40
Clerk's certificate (omitted in printing)	42	
Order allowing certiorari	43	40

[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS

No. 4548, Civil Docket

In re ALBERTO COSTANZO, Petitioner for Writ of Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS—Filed July 8, 1931

Your petitioner, Alberto Costanzo, of the State of Rhode Island, complaining, shows:

That he is unlawfully detained and held by one Anna C. Tillinghast, United States Commissioner of Immigration at Boston, in the State of Massachusetts.

Your petitioner further shows that he has been ordered deported under Section 19, Chapter 29 of an Act of Congress passed February 5, 1917.

[fol. 2] That your petitioner is thirty years of age, came to the United States from Italy when he was five years of age and has resided continuously in the United States since that time.

That your said petitioner was taken into custody by Inspector Frank E. Batchelder, with the United States Immigration Service, by virtue of said Act of Congress under a warrant issued by W. W. Hubbard, Second Assistant Secretary of Labor, a copy of which is annexed and marked "Exhibit A". Said warrant alleges that the petitioner has been found in the United States in violation of the Immigration Act of February 5, 1917, for the following among other reasons:

"That he has been found managing a house of prostitution, or music, or dance-hall, or other place of amusement or resort, habitually frequented by prostitutes."

Your petitioner further alleges that he was taken into custody by Inspector William M. Clark of the United States Immigration Service by virtue of said warrant, a copy of which is hereto annexed and marked "Exhibit A", and that your petitioner had a hearing on said warrant before said Inspector William M. Clark, at the conclusion of

which the said inspector recommended that your petitioner be deported to Italy.

In accordance with said recommendation, the Commissioner General of Immigration of the United States Department of Labor has ordered your petitioner deported to Italy and by reason thereof your petitioner alleges that your said petitioner was on the eighth day of July, A. D. 1931, taken into custody and is now held in detention by said Anna C. Tillinghast, United States Commissioner of Immigration at Boston, in the Commonwealth of Massachusetts.

Your petitioner avers that on or about the twenty-fifth day of October, 1925, he was indicted in the Superior Court for Washington County, in the State of Rhode Island, on the charge set forth in said warrant, a copy of which is hereto annexed and marked "Exhibit A" and on a plea of nono made by your petitioner to said indictment was sentenced to a term of three years in the Rhode Island State's prison, and that after serving sixteen months and [fol. 3] fourteen days of said sentence he was released on parole by the Board of Parole of the State of Rhode Island.

Your petitioner further avers that he is a laborer by occupation; that he is married and has two children, both of whom were born in the United States, and that since his release from the Rhode Island State's prison he has been living with his wife and children and supporting them.

Your petitioner further avers that he has no relatives or friends or property in Italy and does not speak the Italian language.

Your petitioner further alleges that the order of the Commissioner General of Immigration of the United States Department of Labor ordering the deportation of your petitioner to Italy is in violation of Article VIII of the Articles of Amendment to the Constitution of the United States which provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unjust punishments inflicted."

Your petitioner avers that he is just as much a product of the United States as though born in this country. He is unacquainted with the Italian language and customs; has no friends or relatives or property in Italy; he knows no other habits or customs and traditions than ours, and that whatever habits and customs he has acquired are American hab-

its and customs and were acquired in the United States. He was arrested, indicted and sentenced to prison, and served sixteen months and fourteen days in the Rhode Island State's prison and thereby paid the penalty for the offence and paid his debt to society for the violation of one of the laws of the State of Rhode Island.

Your petitioner further alleges that deportation would be to him exile and would be most cruel and unusual punishment; that the law was enacted to rid this country of immigrants who were criminals in their native land and acquired their vices and habits in the land from which they emigrated to the United States and was not adopted for the purpose of deporting our own criminals and wrong-doers.

Wherefore your petitioner prays that a writ of habeas [fol. 4] corpus be issued by this Honorable Court ordering Anna C. Tillinghast, the United States Commissioner of Immigration at Boston, in the Commonwealth of Massachusetts, to appear and show cause why the said Alberto Costanzo should not be released from further custody under said warrant of arrest and deportation.

Your petitioner further prays that pending a hearing on the merits of this petition the said Alberto Costanzo may be permitted to remain in the United States and that he may be released upon such conditions as to this Honorable Court may deem best and proper.

Alberto Costanzo.

Duly sworn to by Alberto Costanzo. Jurat omitted in printing.

Let writ issue. July, 1931.

EXHIBIT A TO PETITION

Warrant—Arrest of Alien

United States of America, Department of Labor, Washington

No. 55487/62

To Commissioner of Immigration, Boston, Mass., or to any immigrant inspector in the service of the United States:

Whereas, from evidence submitted to me it appears that the alien Alberto Costanzo, who landed at the port of New

York, N. Y., on or about the 15th day of June 1905 has been found in the United States in violation of the immigration act of February 5, 1917, for the following among other reasons:

"That he has been found managing a house of prostitu- [fol. 5] tion, or music, or dance hall, or other place of amusement, or resort, habitually frequented by prostitutes."

I, W. W. Husband, Second Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1926". Pending further proceedings the alien may be released from custody under bond in the sum of $1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 16th day of March 1926.

—— ——, Second Assistant Secretary of Labor.

Upon the filing of this petition, a summons issues to Anna C. M. Tillinghast, United States Commissioner of Immigration, to appear before said court on Monday, the thirteenth day of July, A. D. 1931, at three o'clock p. m., to show cause, if any she has, why a writ of habeas corpus should not issue for the body of Alberto Costanzo, and the marshal makes a return upon said summons as follows:

IN UNITED STATES DISTRICT COURT

MARSHAL'S RETURN ON SUMMONS

UNITED STATES OF AMERICA,
Massachusetts District, ss:

Boston, July 8, 1931.

Pursuant hereunto, I have this day summoned the within named Anna C. M. Tillinghast to appear before the District Court of the United States, as within directed, by giving to

her in hand at the Immigration Station, East Boston, in said District, a true and attested copy of the within summons.

William J. Keville, United States Marshal. James F. Mahar, Deputy United States Marshal.

On the twenty-seventh day of July, A. D. 1931, said cause is set down for hearing and fully heard by the court, the [fol. 6] Honorable James A. Lowell, District Judge, sitting, and the following Order of Court is entered, dismissing petition and denying writ:

IN UNITED STATES DISTRICT COURT

ORDER DISMISSING PETITION—July 27, 1931

LOWELL, J.:

The above-entitled cause having come on for hearing on the twenty-seventh day of July 1931, it is now, to wit, July 27, 1931, ordered that the petition be dismissed and writ denied; but it being represented to the court that the petitioner intends to take an appeal from this order, it is further ordered that said petitioner enter into a recognizance with sufficient surety in the sum of three thousand dollars ($3,000) for the appearance of said petitioner to answer the judgment of the appellate court.

By the Court.

Mary E. Prendergast, Deputy Clerk.

July 27, 1931.

J. A. L., D. J.

CLAIM OF APPEAL AND ALLOWANCE THEREOF

From the foregoing order of court, Alberto Costanzo claims an appeal to the United States Circuit Court of Appeals for the First Circuit, and gives good and sufficient security that he will prosecute his appeal to effect and answer all costs if he fail to make his plea good, and said appeal is allowed accordingly.

RECORD OF UNITED STATES BOARD OF IMMIGRATION, DEPARTMENT OF LABOR [EXTRACTS]—Filed July 27, 1931

File No. 55487/62, Incl. No. 8404

Washington, July 13, 1931.

I hereby certify that the annexed is the original file constituting the record of the Bureau of Immigration, Washington, D. C., in the case of Alberto Constanzo or Costanzo or Albert Costanzo.

George J. Harris, Assistant Commissioner General of Immigration. (Seal United States Circuit Court of Appeals, First Circuit.)

[fol. 7] Office of the Secretary

I hereby certify that George J. Harris, who signed the foregoing certificate, is now, and was at the time of signing, Assistant Commissioner General of Immigration and that full faith and credit should be given his certification as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Labor to be affixed this thirteenth day of July one thousand nine hundred and thirty-one.

Robe Carl White, the Assistant Secretary of Labor. (Seal.)

[MITTIMUS—STATE PRISON]

Copy

STATE OF RHODS ISLAND AND PROVIDENCE PLANTATIONS, Washington, sc.:

SUPERIOR COURT, NOVEMBER SESSION, A. D. 1925

[SEAL.]

To the sheriff of the county of Washington or to his deputies, and to the warden of the State prison in county of Providence, Greeting:

Whereas, by said court, Albert Costanzo, of Providence in the County of Providence, in said State has been this day sentenced for harboring for prostitution as follows, viz:

That he the said Albert Costanzo be imprisoned for and during the term of three years from and after this twenty-ninth day of December, A. D. 1925, in the State prison, in the county of Providence, and there kept at hard labor.

These are, therefore, in the name of said State, to require you, the said sheriff or deputies to take the body of the said Albert Costanzo into your custody, and him deliver to said warden of said prison, with this warrant; and you the said warden, are alike required to receive said Albert Costanzo into your custody, and him safely keep in said State prison until sentence be fully executed and carried into effect, according to the true intent and meaning thereof, and this shall be your sufficient warrant for so doing.

[fol. 8] Hereof fail not, &c.

Witness the Seal of our Superior Court, at South Kingstown, this twenty-ninth day of December, A. D. 1925.

Wm. H. Caswell, Clerk.

Ind. #405

[On back]

CRANSTON, SC:

March 3, 1926, A. D.

I hereby certify that this is a true copy.

Charles E. Linscott, Warden.

PROVIDENCE, SC:

Cranston, Dec. 29th, 1925.

Committed the within named Albert Costanzo to the State prison, in said County, as within commanded.

Fred T. Mitchell, Sheriff.

Fees: Committing, .70; 50 miles, 10.00—$10.70.
33429. S. P. 3987, Page 196. 12/29/25.

Office of Inspector in Charge, Providence, R. I.

Jan. 22, 1926.

526/359, Alberto Costanzo

Investigation Made by Inspector W. M. Clark at Howard, R. I., 1/21/26

The case of the above-named alien was called to my attention by Judge A. A. Capatosto of the Rhode Island Su-

perior Court, who sentenced him to State prison and I went to State prison, Howard, R. I., on January 21, 1926, took the following statement under oath:

My name is Alberto Costanzo, 35 Harper Street, Providence, R. I., age 24, born in Torre, Province of Caserta, Italy, of which country I am a subject; I was married in Providence about ten years ago, I was only a very young boy; my wife's name is Laura and we have two children, Beverly four and Joseph two, both born in Providence and they are living at 12 Tappan Street, Providence, R. I.; I can read and write, mill operative.

Q. 1. When did you come to the United States?

A. About nineteen years ago, do not remember the month or date, or name of the ship.

Q. 2. Who brought you to this country?

[fol. 9] A. My father Francisco, he had died since, and three sisters, Ida, Raffaela and Anina, they are living at 34 Marietta Street, Providence, R. I.

Q. 3. Where did you land in this country?

A. At New York.

Q. 4. Have you ever taken any steps to become a citizen of the United States?

A. No.

Q. 5. Did your father ever take any steps to become a citizen of the United States?

A. No; my father died about four years after he came to this country and he never took out any papers.

Q. 6. When were you arrested?

A. November 1925.

Q. 7. What was the charge against you in court?

A. Harboring for prostitution.

Q. 8. Did you plead guilty or were you convicted?

A. First I pleaded not guilty but my lawyer made me change my plea to nolo.

Q. 9. When were you sentenced?

A. December 29th, 1925 to three years in State's prison.

Q. 10. Have you any relatives in Italy?

A. A brother, Amerigo, in my native town.

Recommend that warrant issue for the arrest of this alien alleging that he is an alien, managing or employed by or in connection with house of prostitution, music or dance

hall, or place of amusement or resort habitually frequented by prostitutes; or where prostitutes gather; or who assist prostitutes or promise to protect from arrest any prostitute.

W. M. Clark, Inspector in Charge.

WMC/f.

APPLICATION FOR WARRANT OF ARREST UNDER SECTION 19 OF THE ACT OF FEBRUARY 5, 1917

United States Department of Labor, Immigration Service, Boston, Mass.

No. 526/359

March 4th, 1926.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of Alberto Costanzo, age 24 years, native of Italy, who arrived at New York some time in 1905, date and steamer unknown. The alien named in the attached certificate, upon the following facts which the undersigned has carefully investi- [fol. 10] gated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in United States. Give sources of information, and, where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants. Application for a warrant based on conviction for a crime committed in the United States should be accompanied by a copy of the alien's commitment obtained from the warden of the institution wherein he is confined, or a certificate of conviction obtained from the clerk of the court wherein sentence was pronounced.)

From the enclosed report by Inspector in charge Clark of the Providence office, it is apparent that the abovenamed alien is in the United States in violation of law, in that he has been found managing a house of prostitution, or music or dance hall or other place of amusement or resort, habitually frequented by prostitutes.

Copy of mittimus is attached.

The Commissioner at New York has been unable to verify the alien's arrival.

(1) The present location and occupation of above-named alien are as follows: State prison, Howard, R. I.

Frank S. Abercrombie, Acting Commissioner.

JAD. Enc.

Issue W. for Manager, full charge. O. W. M.

[Stamped on face:] Recd. Bu. of Immigration Mar. 5, 1926, Mails and Files. Mail & Files, March 8, 1926, Out. Received 3, 8, 26. Warrant Division.

[fol. 11] WARRANT—ARREST OF ALIEN

United States of America, Department of Labor, Washington

No. 55487/62

To Commissioner of Immigration, Boston, Mass., or to any immigration inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Alberto Costanzo, who landed at the port of New York, N. Y., on or about the fifteenth day of June, 1905, has been found in the United States in violation of the immigration act of February 5, 1917, for the following among other reasons:

That he has been found managing a house of prostitution or music or dance hall or other place of amusement or resort, habitually frequented by prostitutes.

I, W. W. Husband, Second Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the Uinted States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1926." Pending further proceedings the alien may be released from custody under bond in the sum of $1,000.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this sixteenth day of March, 1926.

W. W. Husband, Second Assistant Secretary of Labor.

BMC. W.

[Stamped on face:] Received Mar. 18, 1926, Immigration Service, Boston.

[fol. 12] U. S. Department of Labor, Immigration Service

File No. 526/359

Report of Hearing in the Case of Costanzo, Alberto, under Department Warrant No. 55487/62, Dated March 16, 1926

Hearing Conducted by Inspector W. M. Clark at Howard, R. I.

Date: 5/6/26.

Alien taken into custody at State prison, Howard, R. I., May 6, 1926 by Inspector W. M. Clark and allowed to remain in State prison. Minutes taken and transcribed by Clark. Said Alberto Costanzo being unable to speak and understand the English language satisfactorily, an interpreter, named Joseph Zelano, competent in the Italian language, was employed and duly sworn.

Said Alberto Costanzo was informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country whence he came, said warrant of arrest being read and each and every allegation therein contained carefully explained to him. Said alien was offered an opportunity to inspect the warrant of arrest and the evidence upon which it was issued, which privilege was accepted. The alien being first duly sworn, the following evidence was presented:

Q. 11. What is your name and address?

A. Alberto Costanzo, 35 Upper Street, Providence, R. I., where I have my brother Gaetano and his wife.

Q. 12. How old are you?

A. I am twenty-five; do not know the date of my birth.

Q. 13. Where were you born?
A. In Torre, Province of Caserta, Italy.
Q. 14. Have you taken any steps to become a citizen of the United States?
A. I did not have a chance; my father died before he was here for five years; my brother Gaetano is a citizen.

[Warrant read and explained.]

Q. 15. Do you understand this warrant?
A. Yes.
Q. 16. Under the law you have the right to be represented at this hearing by counsel; do you wish to be so represented?
A. Yes, I will have my brother get a lawyer for me.

[fol. 13] Hearing adjourned to give alien an opportunity to secure counsel. Copy of warrant of arrest left with warden of prison.

On June 29, 1927, at the United States Immigration Office, Providence, R. I., hearing started March 16, 1926 was continued.

Present:
Alien Alberto Costanzo.
Attorney James E. Dooley, 15 Westminster Street, Providence, R. I.
Inspector W. M. Clark.
Inspector F. J. McGovern, Secretary.

Alien sworn by Inspector Clark.

Q. 17. Have you changed your address?
A. No; still 35 Upper Street, Providence, R. I., where I live with my brother Gaetano.
Q. 18. Are you married?
A. I was, not now.
Q. 19. What was your wife's name?
A. Laura Germano.
Q. 20. Have you any children?
A. Two.
Q. 21. Both born in the United States?
A. Yes.
Q. 22. How old are the children?

A. One five and one six.

Q. 23. Did Mrs. Costanzo secure the divorce from you?

A. Yes.

Q. 24. When?

A. Last year in September.

Q. 25. Did she receive custody of the children?

A. I do not know what happened.

Q. 26. Where is she living now?

A. In Providence; must be with her father.

Q. 27. You can read and write?

A. I can read, but I cannot write so good.

Q. 28. What is your occupation?

A. Work in a gasoline station for my brother Gaetano at 778 Charles Street, Providence, R. I.

Q. 29. You earn how much?

A. $17 a week.

Q. 30. When did you come to the United States?

A. In 1907; I do not know the month.

Q. 31. Do you know the name of the ship?

A. No.

Q. 32. Who came with you?

A. My father and three sisters; father named Francisco, and sisters, Raffaela, Ida and Anina.

Q. 33. Did they all come with you at the same time and same ship?

A. Yes.

[fol. 14] Q. 34. And you came direct to Providence?

A. We landed in Boston, and took the ship at Naples.

Q. 35. Do you know if it was the White Star line?

A. I was too small.

Q. 36. How old were you?

A. Five years old when I came here.

Q. 37. Have you ever left the United States since that time?

A. No; in Providence all the time.

Q. 38. You went to school here?

A. Left at 5 B; my father died and I had to go to work.

Q. 39. What school did you go to?

A. Grammar school on Branch Avenue.

Q. 40. Is that known as the Branch Avenue grammar school?

A. Yes.

Q. 41. And you went there from primary to grade 5 B and left when your father died; in what year?

A. I do not know.

Q. 42. Do you know how old you were when you left school?

A. About thirteen or fourteen.

Q. 43. Then did you go to work?

A. I had to.

Q. 44. How many times have you been arrested in the United States?

A. Once before this.

Q. 45. When?

A. 1916 or 1917.

Q. 46. What was the charge against you?

A. Stealing a machine, because I was with fellows who were stealing the machine.

Q. 47. Were you tried?

A. Yes; found guilty.

Q. 48. Did you receive a sentence?

A. Six months in Providence County jail.

Q. 49. Did you serve that time?

A. Yes; six months.

Q. 50. You were arrested the second time when?

A. September 29th, 1925.

Q. 51. Where were you arrested?

A. In the City of Providence.

Q. 52. And what was the charge against you?

A. I do not know myself; inducing, or I do not know what they call it.

Q. 53. I have here a copy of the mittimus made out in your name in the Superior Court, Washington County, issued to the warden of State prison stating that you have been this day sentenced, for harboring for prostitution, for a term of [fol. 15] three years from the 29th of December, 1925, at State prison. Does this mittimus refer to you?

A. Yes.

[No question numbered 54.]

Q. 55. Did you plead guilty?

A. Pleaded nolo.

Q. 56. And the sentence was three years in State prison?

A. Yes.

Q. 57 Any fine?

A. No.

Q. 58. How long did you serve?

A. Sixteen months and 14 days.

Q. 59. Then you were paroled by the State Board?

A. Yes.

Q. 60. When?

A. About May 24th, 1927.

Q. 61. Were you running a house of ill fame?

A. I was not running it.

Q. 62. You were arrested in connection with the house?

A. I was arrested for inducing this young lady that calls there.

Q. 63. There is no young lady's name in the mittimus?

A. That is what that means.

Q. 64. It states that you were harboring for prostitution. Did you have this young woman out there?

A. I drove her down there.

Q. 65. Were you connected with the management of the place?

A. The lease was in my name, the other fellow was running it.

Q. 66. You mean James Ritchie was running the house?

A. He got two years for running the house of ill fame.

Q. 67. And the house was in your name?

A. The lease was in my name; he was paying me $15 a week for the place.

Q. 68. Who did you get the house from?

A. The owner.

Q. 69. Who was that?

A. I do not know his name; it is on the lease.

Q. 70. Did you pay the rent?

A. I did.

Q. 71. How much was the rent?

A. $30 a month.

Q. 72. And you claim that Ritchie was the proprietor and you were employed there?

A. I was not employed there; I was up there that time to collect the money he had to give me.

Q. 73. And you brought this young woman down there?

A. Yes.

Q. 74. What is her name?

A. I do not know her name, only by her first name.

[fol. 16] Q. 75. You brought her from where to the house?

A. When I met her she asked me if I was going to the city, and asked if I could give her a ride down, and on the way down there she stated she wanted to get some clothes, and after she told me she was going to a place, that she was married and did not live with her husband. And when I asked her where she was going and she told me the place, of course I knew the place. I did not think when she hopped in that I was taking her down there; I volunteered to take her there, and when I got down there went to collect my rent, and that was how the girl was caught. She did not tell the truth in court. Why didn't she say who was with her? If they ask me I will tell them I was with her.

Q. 76. You did not stay there that night?

A. No.

Q. 77. Who raided the house?

A. The State cops.

Q. 78. With Mr. De Avila?

A. No; there was a sergeant, and a few more.

Q. 79. You were not there then?

A. I was there the time the house was raided about eight or nine o'clock.

Q. 80. Was that the same day you brought the girl down?

A. Three days later.

Q. 81. Had you stayed over night?

A. No, I did not.

Q. 82. How old is this young woman?

A. I do not know.

Q. 83. Is she married?

A. Yes.

Q. 84. Is she a young woman?

A. I could not tell; they all look young now.

Q. 85. Who have you got in the United States now?

A. I got a brother Gaetano, and sisters Rafaela and Anina; father and mother are dead.

Q. 86. What was your mother's name?

A. Bridiga Campobiano.

Q. 87. How many girls have they out there?

A. Two of them. I never saw the other one.

Q. 88. Saving any money now?

A. I am working every day.

Q. 89. Your brother owns the business?

A. Yes.

Witness, sworn, testified as follows:

[fol. 17] Q. 1. What is your name and address?
A. Gaetano Costanzo, 35 Upper Street, Providence, R. I.
Q. 2. How old are you?
A. Born 1892; thirty-six next birthday.
Q. 3. Born in Italy?
A. Yes.
Q. 4. How long are you in the United States?
A. About twenty years.
Q. 5. Are you a citizen of this country?
A. Yes; have full papers.

By Attorney James E. Dooley:

X Q. 6. You are the owner of this gasoline station at 776 Charles Street, Providence, R. I.?
A. Yes.
X Q. 7. Is your brother Alberto living with you?
A. Yes.
X Q. 8. At your home?
A. Yes.
X Q. 9. Is he working?
A. Since he came out.
X Q. 10. Are you giving him steady employment?
A. Yes.
X Q. 11. And will you give him steady employment?
A. Certainly.
X Q. 12. His mother and father are dead?
A. Yes.
X Q. 13. All his brothers and sisters are in this country?
A. Yes.
X Q. 14. He has no relatives in Italy at all?
A. No.
X Q. 15. Is there any one over there he could go to if he is sent back?
A. No.
X Q. 16. Practically alone if he was sent over there?
A. Yes.
X Q. 17. You are paying him a weekly salary?
A. Yes.
X Q. 18. And will continue to do so?
A. Yes.

X Q. 19. His wife divorced him while he was in jail?
A. Yes.
X Q. 20. She was awarded the custody of the children?
A. Yes.

[Hearing continued until Tuesday morning at 10 o'clock.]

[fol. 18] Continuation of Hearing July 5, 1927, at United States Immigration Office, Providence, R. I.

Present:
Alien, Alberto Costanzo.
Attorney James E. Dooley.
Inspector W. M. Clark.
Inspector F. J. McGovern, Secretary.

To alien:

Q. 90. You understand that this is a continuation of your hearing and that you are still under oath to tell the truth?
A. Yes.

By Attorney James E. Dooley:

X Q. 91. You have been in this country since you have been five years old?
A. Yes.
X Q. 92. And you have never left the United States since you came here?
A. No.
X Q. 93. Your father and mother are dead?
A. Yes.
X Q. 94. All your brothers and sisters are in this country?
A. Yes.
X Q. 95. You have no friends or relatives that you could go to if you were sent back to Italy?
A. No.
X Q. 96. You went to school in this country?
A. Yes.
X Q. 97. And after you left school worked until this trouble?
A. Yes.
X Q. 98. You are now working for your brother at a gasoline station?
A. Yes.

X Q. 99. And if you remained here it is your plan to continue to work for him?

A. Yes.

X Q. 100. After this trouble and while you were in jail your wife divorced you?

A. Yes.

X Q. 101. And she was awarded the custody of the two children?

A. Well, I do not know about that; I suppose she was.

X Q. 102. You leased this house at Saunderstown that was raided?

A. Yes.

X Q. 103. What did you lease it for?

A. To put up a gasoline station and a little store.

X Q. 104. And did you put up the gasoline station?

[fol. 19] A. No; I found out that it was not necessary because somebody else was trying to put up a gasoline station there and was refused, so I knew it was not necessary.

X Q. 105. It was your intention to operate a gasoline station, but after you leased it you found out you could not get permission?

A. Yes.

X Q. 106. You say you let the place to James Richie?

A. Yes.

X Q. 107. And he agreed to pay you $15 a week?

A. Yes.

X Q. 108. Did you have any agreement other than he was to pay you $15 a week?

A. I do not know just what you mean.

X Q. 109. Is that the only agreement you had with him, that he was to pay you $15 a week?

A. I had to be there twice a week because he did not have a machine, and he was supposed to give me $15 a week.

X Q. 110. Did you have anything to do with the management or operation of the place?

A. No.

X Q. 111. Did you get any money from it, other than the rent?

A. No, sir.

X Q. 112. Was there any agreement that you would get any money?

A. No.

X Q. 113. Did you ever stay around that place?

A. No.

X Q. 114. Were you present other than at the times you were collecting rent?

A. No; only the night it was raided.

X Q. 115. And were you there then to collect the rent?

A. Yes.

X Q. 116. At the time you took this lease, were you given the privilege of taking it for two months with the option to give it up at that time, or continue for a period of one year?

A. Yes.

X Q. 117. And when you made this agreement with James Richie for him to take the place, did he agree to take the place at the end of two months?

A. Yes.

X Q. 118. And at that time transfer it to his name?

A. Yes.

X Q. 119. And you were to have nothing further to do with it?

A. Yes.

X Q. 120. You said you brought this girl down there?

A. Yes.

X Q. 121. Did you receive anything for taking her down there?

A. No.

[fol. 20] X Q. 122. Did you have anything to do with inducing her to go there?

A. No.

X Q. 123. Did you have any agreement with her of any kind?

A. No.

X Q. 124. Any agreement as to what she was to do when she got there?

A. No.

X Q. 125. Did you ever have any agreement with her that you were to receive money from her?

A. No.

X Q. 126. Did you ever receive money from her?

A. No.

X Q. 127. Did you see her again after you brought her that night?

A. Only on the night of the raid.

X Q. 128. And you were there on the night of the raid collecting rent?

A. Yes.

X Q. 129. Did you ever stay over night in that house?

A. No.

X Q. 130. After this raid you were indicted for harboring for prostitution, pleaded nolo to that indictment?

A. Yes.

X Q. 131. How did you come to plead nolo?

A. I was told to.

X Q. 132. By whom?

A. By my attorney.

X Q. 133. Did he tell you if you pleaded nolo you would get a deferred sentence?

A. Yes.

X Q. 134. Who was your attorney?

A. Thomas Dorney.

X Q. 135. You pleaded nolo, which is equivalent to pleading guilty, upon the advice of your attorney Mr. Dorney, and with the understanding that you were to be given a deferred sentence?

A. Yes.

X Q. 136. Would you have pleaded nolo and admitted you were practically guilty if you had understood that you were to be sent to jail?

A. No, I would not.

X Q. 137. Do you know whether or not this girl you gave the ride to was a girl of good moral character or not?

A. Well, I do not know about her only what people told me; I could not tell myself.

X Q. 138. Her reputation, as you know it, she was not of good moral character?

A. That is what I heard about her; I knew she was going there for that purpose.

X Q. 139. You were sentenced to three years, and you [fol. 21] were paroled about May 24th, 1927, and that was at the time you were first eligible for parole?

A. Yes.

X Q. 140. You were never before the parole board before?

A. No.

X Q. 141. Before this trouble happened, what line of business did you work at?

A. Twisting in the mill.

X Q. 142. Cotton mill?
A. Yes.
X Q. 143. Had you worked steadily at that occupation?
A. Yes.
X Q. 144. Have you ever had anything to do with running road houses or managing road houses?
A. No.
X Q. 145. Did you have any agreement or understanding with James Richie where you were to get any profits from the operation of this house?
A. No.
X Q. 146. He was just to pay the rent?
A. Yes.
X Q. 147. And after two months he was to take the lease?
A. Yes.
X Q. 148. Was Richie indicted and convicted for running this house?
A. Yes.
X Q. 149. He was sent to jail?
A. Yes.
X Q. 150. He is now in jail?
A. I do not know.
X Q. 151. He pleaded guilty in court to operating this house?
A. Yes.
X Q. 152. You do not speak very good Italian?
A. No; I understand more than I talk.
X Q. 153. You would have to learn the language all over again, if you were sent to Italy?
A. Yes.

By Inspector Clark:

Q. 154. When did you lease this house, Albert?
A. August 1, 1925.
Q. 155. Do you remember the owner's name?
A. No.
Q. 156. How long did you lease it for?
A. One year, at $30 a month.
Q. 157. And you turned it over to Richie at $15 a week?
A. Yes.
Q. 158. And made an agreement to be there twice a week with supplies that he might purchase?
A. Yes.

[fol. 22] Q. 159. Was he down there all the time?

A. Yes.

Q. 160. Why did you have to be there to receive the supplies?

A. He would telephone and I bought the things and would take them down to him, as I had a machine, and I agreed to do this until he bought a machine.

Q. 161. Was there anything in your lease from the owner that prevented you from sub-leasing it?

A. No.

Q. 162. You could have sub-leased it to him, if you wanted to?

A. Yes.

Q. 163. You only had to say so?

A. Yes.

Q. 164. That agreement was between yourself and Richie?

A. Yes.

Q. 165. Anyone else besides Richie?

A. No.

Q. 166. How about the other two boys that were working for Richie?

A. One was Nick, I do not know his last name, and John Barome; I do not know if he had anything to do with it; he was running a house on Broad Street, and his name was there, because we had to have a witness to it.

Q. 167. Isn't it a fact that you know this woman pretty well?

A. No.

Q. 168. How long have you known her?

A. Four days.

Q. 169. When was that?

A. The day I took her out there, and the Saturday night the place was raided.

Q. 170. Have you anyone in Italy at all?

A. Not that I know of; my last aunt died when she was 92 years old.

Q. 171. What was her name?

A. I do not remember.

Q. 172. In the event the Government orders your deportation, what baggage will you have?

A. I will have nothing.

Q. 173. What further have you to say as to why you should not be deported in conformity with law?

A. I have got nowhere to go to; I was a boy when I came here; I never refused to do anything the law wished, and I would be willing to go to the front, willing to be sent to the army now in place of deportation; I respect the United States and I feel it is my country, as I came here as a small boy; I know it is no honor to be deported from the United States.

[fol. 23] Q. 174. Have you taken out first papers since you were 21?

A. No; I did not think it was necessary being here since I was a small boy.

By Attorney James E. Dooley:

X Q. 175. Is it your intention to take out citizenship papers?

A. Yes.

SUMMARY AND RECOMMENDATION

Alberto Costanzo, age 25, is an alien; native of and subject of Italy; literate; laborer by occupation; married; his wife Laura Germano Costanzo secured a divorce from this alien while he was serving time in State prison; they have two children, both of whom were born in the United States, and according to the testimony the wife when she secured her divorce from the alien was given the custody of the children. This alien testifies that he does not remember when he came to the United States, the month, year or name of boat, or where he landed in this country, but states that he came here when he was five years of age and that he has continued to live here ever since that time; that his father was never naturalized and that he himself has taken no steps to become a citizen of the United States. The alien testifies that he was arrested in 1916 or 1917 in connection with a stolen automobile, was convicted and sentenced to six months in jail, which time he served, and that he was arrested in Providence, R. I., on September 29, 1926, and was indicted for harboring for prostitution, pleaded nolo, which is equivalent to guilty, and was sentenced to three years in State prison at Howard, R. I., as per attached

mittimus, of which time the alien served sixteen months and fourteen days. The alien has two brothers and a sister in the United States, both of his parents are dead, and he claims not to have any relatives in Italy.

I recommend that this alien be deported in that he has been found managing a house of prostitution, or music or dance hall or other place of amusement, or resort, habitually frequented by prostitutes.

In the event of deportation better take an attendant; this alien is young and very active.

[fol. 24] Money: None.

Baggage: None.

Passport: None; Form 617 attached.

Deport: To Torre, Province of Caserta, Italy.

W. M. Clark, Inspector in Charge.

Boston, August 13, 1927.

In re ALBERTO CONSTANZO

This case comes before the Board of Review in warrant proceedings.

No hearing. Attorney James E. Dooley represented alien at the port.

Alien accorded hearing on May 6th and June 29, 1927, at Providence, R. I., by Inspector W. M. Clark. Reopened on July 5, before same Inspector.

The record relates to a native and citizen of Italy, Italian race, aged 24, male, divorced (recently), who landed at New York some time in 1905, ex S. S. unknown.

Alien was released on bond.

Charges: Found managing house of prostitution.

Nearest relatives abroad: None given.

Passport: To be secured. Bureau's aid may be needed.

The alien, so far as known, has resided in the United States since 1905. He has two American born children. His wife divorced him recently. Never took out naturalization papers. He was convicted in 1916 or 1917 of stealing a "machine" and served 6 months in the county jail at Providence, R. I. He was arrested on September 29, 1925,

on the charge of "harboring for prostitution", and was sentenced to three years in prison, actually serving 16 months and 14 days, when he was paroled. He admits that the lease for the house of prostitution was in his own name, though it was run by another man. He paid $30 a month rent, and $15 per week was paid him by the man who ran the place, and went to the house to collect, weekly, the amount due him under the contract or understanding. He [fol. 25] was arrested for taking a girl to this house of prostitution, a girl whom he had met that day and who, estranged from her husband, seems to have been easy prey. This girl remained in the house, together with one other who had been an inmate previously, and she was found therein when the house was raided three days after her entry thereinto. Since his parole the alien has been workin steadily for his brother, who runs a gasoline station.

The attorney brought out the statement that, though the lease for the said house had been in this alien's name, it was to be transferred to the man who ran the place, after the expiration of two months, after which he, the alien, would have nothing more to do with it. However, he admitted that he knew the girl was to enter upon a life of prostitution at the time he took her to the said house.

Despite the claim that the alien had nothing to do with the management of the house of prostitution, it appears from his own admission that he located one girl who agreed to be an inmate of said house, and who was an inmate for about three days, being taken therefrom by the police authorities at the time this alien was arrested. He also admits that he leased the premises, knew the purpose to which it was to be put, and to which it was put, and bought supplies therefor, these being paid for on delivery to the man who was residing on the premises. He also admits that he visited said house twice a week for the purpose of delivering supplies and collecting the rent, and that the latter was just about double the amount which he himself paid to the owner or rentor of the property. The charge, then, that he has been found managing a house of prostitution is sustained by the evidence.

Considered and recommended that the alien be deported to, Italy at Government expense on the following ground:

That he is in the United States in violation of the immigration act of 1917 in that he has been found managing a

house of prostitution, or music or dance hall or other place of amusement or resort habitually frequented by prostitutes.

Howard D. Eberle, Actg. Chairman, Sec'y and Com'r Gen'ls Board of Review.

JWB.

[fol. 26] So ordered.

A. E. Cook, Assistant to the Secretary.

WARRANT—DEPORTATION OF ALIEN

United States of America, Department of Labor, Washington

526/359. No. 55487/62

To Commissioner of Immigration, Boston, Mass.; Commissioner of Immigration, Ellis Island, N. Y. H., or to any officer or employee of the United States Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigration Inspector W. M. Clark, held at Providence, R. I., I have become satisfied that the alien Alberto Constanzo, who landed at the port of New York, N. Y., on or about the 15th day of June, 1905, has been found in the United States in violation of the immigration act of February 5, 1917, to wit: That he has been found managing a house of prostitution, or music or dance hall, or other place of amusement, or resort habitually frequented by prostitutes, and may be deported in accordance therewith:

I, W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Italy the country whence he came, at the expense of the appropriation "Expenses of Regulating Immigration, 1928", including the services of an attendant, if necessary. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding appearance bond.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 26th day of August, 192.. —— ——, Assistant to the Secretary of Labor.

MCV. EFH.

[Stamped:] W. N. Smelser, Aug. 26, 1917, Mails and Files.

[fol. 27] 55487/62

Boston, September 12, 1927.

In re Alberto Constanzo

This case comes before the Board of Review as a request that warrant of deportation be cancelled.

No hearing. Senator Metcalf interested.

This alien was convicted of harboring a prostitute, and sentenced to imprisonment for a a term of three years, of which he actually served about 16½ months. In reviewing the evidence, it was found that he admitted having procured one girl as an inmate of a house of prostitution in which he was interested and which he was managing. Plea is now made for leniency on the ground that he has been in the United States for many years, was not as guilty as others tried at the same time as himself, and that his steady employment since his release from prison should be given some weight. It is also argued that the charge that he was found managing a house of prostitution was not sustained by the evidence.

Considered and recommended that no change be made in the decision of August 13th and that the warrant of deportation remain in effect.

Howard D. Eberle, Actg. Chairman, Sec'y, and Com'r Gen'ls Board of Review.

JWB.

So ordered.

A. E. Cook, Assistant to the Secretary.

[Stamped:] Received Sep. 13, Warrant Division.

[Stamped:] Received Dec. 9, 1927, Warrant Division

55487/62-64

Boston, December 7, 1927.

In re Alberto Costanzo, 24, and Nicola Petrucione, 25

These cases come before the Board of Review for further consideration in warrant proceedings.

[fol. 28] No hearing. Attorney Frank Burke, 625 Hospital Trust Building, Providence, R. I., interested in the case of Alberto Costanzo.

The alien Alberto Costanzo was ordered deported August 13, 1927, on the ground that he had been found managing a house of prostitution. On September 12, 1927, plea for leniency was denied and it was directed that no change be made in the outstanding warrant.

The attention of the department is now called to the fact that warrant of arrest was cancelled in the case of Nicola Petrucione although the evidence showed that he was the actual manager of the resort owned by Alberto Costanzo and this fact is urged as a reason why similar action should be taken as to Costanzo.

The record in the Costanzo case shows that he admitted ownership of the place in question, admitted that he had conveyed to the resort a young woman and that he had been sentenced on December 25, 1925, on the charge of "harboring for prostitution". Although the resort involved in the Petrucione case is the same as that involved in the Costanzo case, the record in the Petrucione case does not contain any evidence that prostitution was carried on therein. In fact, the record contains no evidence to sustain the charge in the warrant. While the record contains a mittimus showing the conviction and sentence of Petrucione, the charge on which he was sentenced was for keeping and maintaining a common nuisance. While this charge applies to houses of ill-fame, it also applies to gambling places, grog shops and places where intemperate, idle dissolute, noisy, or disorderly persons are in the habit of resorting. It cannot be said, therefore, that the conviction of the alien Petrucione sustains the charge in the warrant. The Petrucione case was decided before the Costanzo case came to the attention of the Department and therefore the cases were not considered together.

It is recommended that Mr. Frank Burke, the interested party, be informed that the evidence fully sustains the warrant of deportation in the case of Alberto Costanzo and that no change can be made in the oustanding order. It is further recommended that the attention of the Commis-
[fol. 29] sioner of Immigration at Boston be called to the fact that it was found necessary to cancel the warrant of arrest in the case of Nicola Petrucione because of a lack

of evidence to establish the character of the resort conducted by Petrucione as a house of prostitution. The Commissioner should be directed to submit whatever evidence may be obtainable as to the character of said house in order that the Department may give consideration to the question of instituting new deportation proceedings against Nicola Petrucione.

L. Paul Winings, Chairman, Sec'y, & Com'r Gen'ls Board of Review.

HDE/VBE.

So ordered.

A. E. Cook, Assistant to the Secretary.

Memorandum

55487/62 & 64

January 4, 1928.

The attached files relate to the cases of Nicola Petrucione and Alberto Costanzo.

On March 4, 1926 the Boston office submitted applications for warrants of arrest in the cases of the above-named aliens, the applications in the case of Petrucione charging that he is an alien managing or employed by or in connection with a house of prostitution, or music hall or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, and the application in the case of Costanzo alleging that he had been found managing a house of prostitution, or music or dance hall or other place of amusement or resort, habitually frequented by prostitutes, and the Departmental warrants of arrest were issued on the respective grounds.

In the Petrucione case it was developed that the alien was arrested by the State police on July 6, 1925 for keeping and maintaining a common nuisance. To this charge he pleaded nolo upon the advice of his attorney, which is the equivalent to a plea of guilty, and received a deferred sentence. Subsequently he became identified with another establishment, apparently a house of ill fame, which was [fol. 30] raided and he was sentenced to a term of imprison-

ment of one year in the State prison and to pay a fine of $1,000. The record in the case of this alien was not clear as to whether either establishment with which he was identified was maintained as a house of prostitution, and the Board of Review, without referring the case back to have this point cleared up, recommended cancellation of the warrant which action was approved by the Department.

In the case of Costanzo it appears, although it is not definitely established, that he was connected with the same establishment as the one with which Petrucione was last identified, and that the lease of this place was actually in Costanzo's name, although he claims that he was not the actual proprietor.

It furthermore developed that Costanzo had taken a woman of ill repute to this place and there seems to be no question that it was a house of prostitution which, also, similar to the general run of establishments of that kind, sold intoxicating liquors. Costanzo was given a sentence of three years imprisonment and was paroled after serving sixteen and one half months.

Apparently the only reason Petrucione was not given a sentence of equal length was because it was not developed at the time of his sentence that he was connected with the same establishment as the one with which Costanzo was identified, or at least this apparently was not brought out before the grand jury.

The only excuse which can be offered for cancellation of the warrant in the one instance and ordering the deportation in the other is that the Board of Review did not have the evidence before it that Petrucione was identified with a house of prostitution. There can be no question that Costanzo was rightly ordered deported, and therefore it does not resolve itself into a question of whether the warrant in his case should be cancelled, simply because a similar action was taken in the case of Petrucione, as it is believed that the only logical course to follow is to re-institute deportation proceedings in the case of Petrucione and develop the actual facts which were glaringly omitted, or neglected, during the course of the original proceedings.

[fol. 31] Copy

526/359

January 5th, 1929.

Mr. Michael N. Cardarelli, 277 Admiral Street, Providence, R. I.; Mr. Antonio Landi, 13 Greeley Street, Providence, R. I.

GENTLEMEN: You are advised that we are in receipt of a letter from our Department at Washington stating in part that the bond you executed in the case of the alien, Albert or Alberto Costanzo, has been declared breached and the penalty forfeited.

It is, therefore, directed that you forward us a certified check in the sum of One Thousand Dollars in settlement of the amount involved.

If the check is not received here within a reasonable time the matter will be taken up with our Department at Washington in order that suit may be brought looking to the collection of the amount named in the bond.

Very truly yours, Anna C. M. Tillinghast, Commissioner.

JJF.

File No. 55487/62. Incl. No. 8404

July 13, '31.

File constituting the record of the Bureau of Immigration, Washington, D. C., in the case of Alberto Constanzo or Costanzo or Albert Costanzo.

George J. Harris, Assistant Commissioner General of Immigration. The Assistant.

July 13th, thirty-one.

IN UNITED STATES DISTRICT COURT

MEMORANDUM OF RECOGNIZANCE—July 29, 1931

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a District Court of the United States begun and holden at Boston, within and for the District of Massachusetts, on

the fourth Tuesday of June, in the year of our Lord one thousand nine hundred and thirty-one, to wit: July 29, 1931.

[fol. 32] In Case No. 4548, Civil

In re ALBERTO COSTANZO, Petitioner for Writ of Habeas Corpus,

vs.

ANNA C. M. TILLINGHAST, United States Commissioner of Immigration

Personally appeared Alberto Costanzo, of 211 Harvard Avenue, Allston, in said District, principal, and Lexington Surety and Indemnity Company, a corporation duly organized and existing under the laws of the State of New York and having its principal offices in the City of New York and a local office in the City of Boston in the Commonwealth of Massachusetts, by Francis Mahoney, its Attorney in Fact, thereto duly authorized, surety, and severally acknowledged themselves, their heirs, and their administrators to be jointly and severally indebted unto the United States of America in the sum of three thousand dollars, to be levied on their goods and chattels, lands and tenements, and in want thereof upon their bodies, to the use of the said United States, if default be made in the performance of the condition following, to wit:

The condition of this recognizance is such, that if the said Alberto Costanzo, principal, shall personally appear before said District Court of the United States, now holden in Boston, from day to day and term to term hereafter on every day and term to which this case may be continued or on which it may be called, and shall there answer to said United States in the matter of said Petition for Writ of Habeas Corpus, and shall receive and abide the order, decree, judgment, or sentence of this court and of any Appellate Court thereon, and not depart without leave, and so from time to time until said case be finally disposed of, if not previously surrendered or discharged, then this recognizance to be void, otherwise to remain in full force, power, and virtue.

In witness whereof, said principal and surety have hereto set their hands, this twenty-ninth day of July, 1931.

Alberto Costanzo. Lexington Surety & Indemnity Company. Francis Mahoney, Attorney-in-Fact. (Seal Lexington Surety and Indemnity Company, a corporation duly organized and existing under the laws of the State of New York and having its [fol. 33] principal offices in the city of New York and a local office in the city of Boston, in the Commonwealth of Massachusetts.)

Taken in pursuance of an order of said District Court and signed and acknowledged before me.

Helen I. Tweedy, Deputy Clerk.

I approve said surety.

John W. Schenck, Assistant United States Attorney.

In United States District Court

Petition of Alberto Costanzo for Appeal—Filed August 26, 1931

Now comes the petitioner, Alberto Costanzo, and appeals to the Circuit Court of Appeals from the order of the District Court of the United States for the District of Massachusetts denying his petition for a writ of habeas corpus.

By His Attorney, Walter E. Brownell.

August 26, 1931.

Appeal allowed.

James A. Lowell, United States District Judge.

In United States District Court

Assignment of Errors—Filed August 26, 1931

Now comes the petitioner in the above-captioned case and bases his appeal from the order of the District Court of the United States for the District of Massachusetts in denying his petition for a writ of habeas corpus upon the following specific grounds:

1. The denial of the petition for a writ of habeas corpus was in violation of Article VIII of the Articles of Amendment to the Constitution of the United States which provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unjust punishments inflicted."

2. The extenuating circumstances pertaining to the petition warrant the exercise of discretion on the part of the [fol. 34] court in its consideration of a petition for a writ of habeas corpus, notwithstanding the specific wording of the Immigration Act of February 5, 1917.

By His Attorney, Walter E. Brownell.

Bond on appeal for $250.00, approved and filed August 26, 1931 omitted in printing.

[fol. 35] Citation, in usual form, showing service on John W. Schenck, omitted in printing.

[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

[Memorandum.—Orders of enlargement of time for docketing case to, and including, December 10, 1931, are here omitted. A. I. Charron, Clerk.]

[fol. 37] In United States Circuit Court of Appeals for the First Circuit, October Term, 1931

No. 2643

Alberto Costanzo, Petitioner, Appellant,

v.

Anna C. M. Tillinghast, United States Commissioner of Immigration, Respondent, Appellee

Appeal from the District Court of the United States for the District of Massachusetts

Before Bingham, Wilson, and Morton, JJ.

Opinion of the Court—February 25, 1932

Bingham, J.:

This is an appeal from a decree of the District Court for Massachusetts denying a writ of habeas corpus and dismiss-

ing the petition. The petitioner, Alberto Costanzo, is now about thirty years of age, a native of Italy. He has resided in this country since 1905. He has two American born children. His wife has recently divorced him. Neither the petitioner, nor his father, long since dead, became naturalized citizens. He was convicted in 1916 or 1917 of stealing an automobile and served six months in the county jail at Providence, R. I. He was again arrested September 29, 1925, on the charge of harboring for prostitution and was sentenced to three years in prison, of which he served sixteen months and fourteen days, when he was paroled.

[fol. 38] March 16, 1926, a warrant for his arrest was issued by the Department of Labor on the ground that he had been found in the United States in violation of the Immigration Act of February 5, 1917 (39 Stat. 889) for the following reason: "That he has been found managing a house of prostitution or music or dance hall or other place of amusement or resort, habitually frequented by prostitutes." May 6, 1926, he was taken into custody under the warrant and accorded a hearing before an immigration inspector at Providence, who made a report to the Department of Labor sustaining the allegations of the warrant. Thereafter the Board of Review, having examined the record and report of the immigration inspector, made its report to the Secretary of Labor recommending that the alien be deported to Italy. And the Assistant Secretary of Labor, being satisfied that the alien was found in the United States in violation of the Immigration Act of February 5, 1917, on August 26, 1927, issued a warrant of deportation ordering that he be returned to Italy, the country whence he came. Thereupon the appellant filed his petition for a writ of habeas corpus and, the case having been heard in the District Court, the order or decree above set forth was entered, from which this appeal is taken.

The provisions of law under which these proceedings were had and deportation ordered are found in Section 19 of the Act of February 5, 1917, 39 Stat. 889.

The Circuit Court of Appeals for the Ninth Circuit, in construing Section 19 of the Act, in Weedin v. Tayokichi Yamada, 4 Fed. (2d) 455, 456, said:

It "provides for the deportation of certain classes of aliens upon the warrant of the Secretary of Labor. In some

instances the deportation is for acts committed before entry; in others for acts committed after entry. In some instances there is a time limit of five years; in others there is a time limit of three years, and in still others there is no time limit at all. The section first provides that, at any time within five years after entry, any alien who, at the time of entry, was a member of one or more of the classes excluded by law, shall be deported. Then follow provisions for the deporta- [fol. 39] tion of different classes of aliens, with different time limits, or with no time limit, until we reach the provision, 'Any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude,' for which no time limit is fixed or specified."

In that case deportation proceedings had not been instituted within five years after entry of the alien into the country, and the question was whether the five year limitation contained in the first clause of Section 19 was exclusive and applied to the last clause above quoted relating to an alien convicted, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude, for which no time limit was specified. It was there held that the five year limitation contained in the first clause of Section 19 was not exclusive and did not apply to the later clauses of the section, which fixed no time limit.

This construction has been upheld by this court as applied to that clause of Section 19 relating to managing a house of prostitution, etc., here under consideration. Cafaro ex rel. Filippo v. Tillinghast, 31 Fed. (2d) 384; id. 1009. In that case it appeared that Filippo entered the United States in 1900; that, in 1926, he was arrested for deportation on the ground that he had, while in the United States, been found managing a house of prostitution and receiving, sharing in or deriving benefits from the earnings of prostitutes. There the only quuestion was whether the five year limitation applied to the class of aliens to which the relator had been found to belong. In the District Court it was held that it did not apply. And when the case came before this court on appeal (31 Fed. (2d) 1009), the judgment or decree of the District Court was affirmed.

The same conclusion has been reached with respect to this clause of Section 19 in Ranieri v. Smith, 49 Fed. (2d)

537 (7th Cir.). For other cases in which circuit courts of appeals have held that the five year limitation provided for in the first clause did not apply to other clauses containing no specific limitations, see Tillinghast v. Di Pierro, Fed. (2d) (1st Cir.) decided December 17, 1931; Lauria v. United States, 271 Fed. 261 (2d Cir.), certiorari denied, 257 [fol. 40] U. S. 635; Pillisz v. Smith, 46 Fed. (2d) 769 (7th Cir.); McLeod v. Nagle, 48 Fed. (2d) 189 (9th Cir.); Weedin v. Tayokichi Yamada, 4 Fed. (2d) 455 (9th Cir.). The only case reaching a contrary conclusion, which we have been able to find, decided by a circuit court of appeals, is Hughes v. Tropello, 296 Fed. 306, 309 (3rd Cir.).

We regard the question as settled, at least for this circuit, and that the order of deportation in this case was not rendered invalid by the fact that the deportation proceedings were not instituted (Sec. 20 of the Immigration Act of February 5, 1917; United States ex rel. David v. Tod, 289 Fed. 60; Nocchi v. Johnson, 6 Fed. (2d) 1) within five years after the alien's entry into the country.

The ground assigned and particularly relied upon by the petitioner in his brief is that he has continuously resided in the United States for the last twenty-five years, during which time he has married and had a family, and that the order of the Department of Labor ordering his deportation to Italy is in violation of Art. 8 of Articles of Amendment to the Constitution of the United States, which provides that "cruel or unjust punishment [should not be] inflicted". This contention is without merit. It is well settled that "an alien resident in the United States may be deported for any reason which Congress has determined will make his residence here inimical to the best interests of the government"; and that "deportation, when ordered by the proper executive officer of the government, is not visited upon the alien as a penalty for any crime, and the fact that the reason assigned for his deportation may constitute a crime under the local law does not make the hearing upon deportation a trial in a criminal case, to be conducted under the rules of evidence that apply to such a trial," or the order of deportation a punishment within the provisions of the amendment above quoted. Skeffington v. Katzeff, 277 Fed. 129; Fong Yue Ting v. United States, 149 U. S. 698; Zakonaite v. Wolf, 226 U. S. 272, 275, and cases there cited.

The order or decree of the District Court is affirmed.

[fol. 41] IN UNITED STATES CIRCUIT COURT OF APPEALS

CONCURRING OPINION

MORTON, J. (concurring):

I concur for the reason that the present case is covered by the decision of this court in Cafaro ex rel. Filippo v. Tillinghast, 31 Fed. (2d) 384.

As an original question this construction of the statute seems to me erroneous, and the view of it taken in Hughes, Commissioner, v. Tropello, 296 F. R. 306, which I followed—the Cafaro case not being called to my attention—and somewhat elaborated in Tillinghast v. Di Pierro, Fed. (2d) (1st Cir.) decided December 17, 1931, to be the correct one. There are possibilities of shocking cruelty, as the cases show, in a deportation statute having no period of limitation. There are the same humanitarian reasons for limitation of the right to deport as there are for limitation on prosecutions for crime. It seems to me that section 19 is a recognition of this fact and is intended as a general statute of limitations on deportations. The only careful analysis of the language of section 19 which has come to my attention is in McLeod v. Nagle, Commissioner, 48 Fed. (2d) 189 (C. C. A. 9), where much reliance is placed on the use of the semi-colons between the different clauses; it is thought that they operate to cut off the limiting words, "At any time within five years," with which the section begins from all but the first clause. Inasmuch, however, as the semi-colons are interposed between the different subjects of the common verb and the verb itself, their use is so unorthodox as to furnish little guide in interpreting the section. They are really used like commas, and I do not think they separate the important words with which the section begins from the verb "shall * * * be taken into custody and deported," with which the sentence concludes, nor from the intermediate clauses which do not contain their own limitation provisions, or which are not governed by the three-year limitation.

[fol. 42] On January 8, 1932, this case came on to be heard, and was fully heard by the court, Honorable George H. Bingham and Honorable Scott Wilson, Circuit Judges, and Honorable James M. Morton, Jr., District Judge, sitting.

Thereafter, to wit, on February 5, 1932, the opinion of the court (page 37) and a concurring opinion (page 41) were filed, and the following Final Decree was entered:

IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—February 25, 1932

This cause came on to be heard January 8, 1932, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now, to wit, February 25, 1932, here ordered, adjudged and decreed as follows: The decree of the District Court is affirmed.

By the Court.

Arthur I. Charron, Clerk.

MEMORANDUM RE STAY OF MANDATE

Thereafter, to wit, April 20, 1932, mandate was stayed until further order of court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 43] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which ac-

companied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,807. U. S. Circuit Court of Appeals, First Circuit. Term No. 110. Alberto Costanzo, petitioner, vs. Anna C. M. Tillinghast, United States Commissioner of Immigration. Petition for a writ of certiorari and exhibit thereto. Filed May 25, 1932. File No. 36,807.

FILE COPY

No. 110

FILED
MAY 25
CHARLES ELMO

Supreme Court of the United States.

October Term, 1931

ALBERTO COSTANZO,

Petitioner,

v.

ANNA C. M. TILLINGHAST,

United States Commissioner of Immigration,

Respondent.

PETITION FOR THE WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

BRIEF FOR PETITIONER.

WILLIAM H. LEWIS.

Supreme Court of the United States

OCTOBER TERM, 1931.

ALBERTO COSTANZO,
PETITIONER,

v.

ANNA C. M. TILLINGHAST,
UNITED STATES COMMISSIONER OF IMMIGRATION,
RESPONDENT.

PETITION FOR THE WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respectfully represents Alberto Costanzo, petitioner in the above entitled cause, that he is an alien formerly domiciled and residing in Providence, in the State of Rhode Island, now a resident of the City of Boston and State of Massachusetts, and prays that a writ of certiorari issue from this Court to the Circuit Court of Appeals for the First Circuit to review the judgment of that Court entered in the above entitled cause on the 25th day of February, 1932, affirming the judgment and decree of the United States District Court for the District of Massachusetts as of July 27, 1931, dismissing his petition for the writ of habeas corpus. The record of the District